



Federal Communications Commission  
Washington, D.C. 20554

APR 16 1998

EX PARTE OR LATE FILED

Richard B. Brown  
Town Manager  
180 Main Street  
South Berwick, ME 03908-1535

RECEIVED  
APR 21 1998  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Dear Mr. Brown:

This responds to your letter of November 5, 1997, which was forwarded to us by the office of Senator Susan M. Collins, concerning the placement and construction of facilities for the provision of personal wireless services and radio and television broadcast services in your community. Your letter raises issues being considered in three proceedings that are pending before the Commission. In MM Docket No. 97-182 the Commission has sought comments on a Petition for Further Notice of Proposed Rule Making filed by the National Association of Broadcasters and the Association for Maximum Service Television. In this proceeding, the petitioners ask the Commission to adopt a rule limiting the exercise of State and local zoning authority with respect to broadcast transmission facilities in order to facilitate the rapid build-out of digital television facilities, as required by the Commission's rules to fulfill Congress' mandate. In WT Docket No. 97-192, the Commission has sought comment on proposed procedures for reviewing requests for relief from State and local regulations that are alleged to impermissibly regulate the siting of personal wireless service facilities based on the environmental effects of radio frequency emissions, and related matters. Finally, in DA 96-2140 and FCC 97-264, the Commission twice sought comments on a Petition for Declaratory Ruling filed by the Cellular Telecommunications Industry Association seeking relief from certain State and local moratoria that have been imposed on the siting of commercial mobile radio service facilities.

Because all of these proceedings are still pending, we cannot comment on the merits of the issues at this time. However, I can assure you that the Commission is committed to providing a full opportunity for all interested parties to participate. The Commission has formally sought public comment in all three proceedings and, as a result, has received numerous comments from State and local governments, service providers, and the public at large. Your letter, as well as this response, will be placed in the record of all three proceedings and will be given full consideration.

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A B C D E

Mr. Richard B. Brown

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At the same time, the Commission is actively pursuing initiatives that we hope will render any Commission action limiting State and local authority unnecessary. Commission staff, working with the Commission's Local and State Government Advisory Committee, is bringing together representatives of industry and municipal governments to discuss mutually acceptable solutions to the challenges posed by facilities siting. Chairman Kennard has stated that preemption of local zoning authority should be a remedy of last resort, and that the Commission should not consider preemption until the possibilities for constructive dialogue have been exhausted.

Further information regarding the Commission's policies toward personal wireless service facilities siting, including many of the comments in the two proceedings involving personal wireless service facilities, is available on the Commission's internet site at <http://www.fcc.gov/wtb/siting>.

Thank you for your inquiry.

Sincerely,



*for* Steven E. Weingarten  
Acting Chief, Commercial Wireless Division  
Wireless Telecommunications Bureau

Copy to: The Honorable Susan M. Collins

SUSAN M. COLLINS

MAINE

177 RUSSELL SENATE OFFICE BUILDING  
WASHINGTON, DC 20510  
(202) 224-3623  
(202) 224-3888 (FAX)

## United States Senate

WASHINGTON, DC 20510-1904

COMMITTEES:  
GOVERNMENTAL AFFAIRS  
LABOR AND HUMAN RESOURCES  
SPECIAL COMMITTEE  
ON AGING

WTB  
97-182  
193

December 16, 1997

The Honorable William Kennard  
Federal Communications Commission  
1919 M Street, NW  
Room 808  
Washington, DC 20554

Dear The Honorable Kennard:

I am forwarding to your attention copies of letters I received from three municipalities in Maine regarding proposed FCC regulations on the siting of telecommunications towers. I would very much appreciate it if you would respond to these letters directly and provide me with copies

While reserving judgment on the specific rules being proposed, I share the underlying concern expressed in these letters that we may be moving in the direction of unreasonably curtailing local zoning authority. In a state like Maine which places a high value on both its scenic beauty and its historic buildings, there are understandably strong feelings that the placement of telecommunications towers, which are especially noticeable in less urban areas, is a matter over which there should be substantial local control. Despite our shared desire for technological advancement, there could well be a political backlash if the FCC fails to pay sufficient attention to the intensity of the sentiment in this area.

As you know, Senator Leahy has introduced legislation to curtail the FCC's ability to preempt local authority on the siting of towers. My staff is reviewing that legislation, and in that context, I will be very interested to see your response to the three Maine communities.

I appreciate your attention to this matter.

Sincerely,

Susan M. Collins  
United States Senator

SMC:sas

Enclosures



## CITY of BATH, MAINE

Office of the City Manager

Phone: (207) 443-8330

Fax: (207) 443-8337

E-Mail: jbubier@clinic.net

November 5, 1997

The Honorable Susan Collins  
B40 Dirksen Senate Office Building  
Washington, D. C. 20510

Dear Susan:

I am writing you about the Federal Communications Commission's (FCC) attempt to preempt local zoning and land use regulation of cellular, radio, and television towers by making the FCC the "Federal Zoning Commission" for all such land uses.

Both Congress and the courts have long recognized that zoning is a local function. Please contact the FCC and tell them to stop their efforts, which violate the rights of cities and towns to regulate local land uses.

In the 1996 Telecommunications Act, Congress expressly reaffirmed local zoning authority over cellular towers. It told the FCC to stop all rule making where the FCC was attempting to become a Federal Zoning Commission for such towers. Despite this instruction from Congress, the FCC is now attempting to preempt local zoning and land use authority. Their proposal is outrageous when we all understand that broadcast towers are some of the tallest structures built in our cities and towns. The FCC claims that these changes are needed to allow television stations to switch to high definition television quickly. Whether this is so or not, this is no reason to preempt local zoning authority.

These potential FCC actions represent an extreme position on the part of the FCC. This is particularly true given the fact that the FCC is a single purpose agency, with no zoning or land use expertise. Please help stop the FCC. I urge you to contact FCC Chairman, William Kennard and the FCC Commissioners Susan Ness, Harold Furchtgott-Roth, Michael Powell, and Gloria Tristani telling them to stop their intrusion on local zoning authority in cases WT97-197, MM Docket 97-182, and DA96-2140. Also I urge you to join the "Dear Colleague Letter" currently being prepared to go the FCC from many members of Congress. And, finally, please oppose any efforts by Congress to grant the FCC the power to act as a "Federal Zoning Commission" and preempt local zoning authority.

John D. Bubier

City Manager

55 Front Street

Bath, Maine 04530

Ships

Heritage

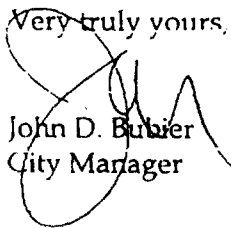
Progress

The Honorable Susan Collins  
November 5, 1997

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The following people at national municipal organizations are familiar with the FCC's proposed rules and municipalities' objection to them: Barrie Tabin at the National League of Cities, (202) 626-3194, and Cheryl Maynard at the American Planning Association, (202) 872-0611. Please feel free to call them if you have any questions.

Very truly yours,



John D. Bubier  
City Manager

John D. Bubier

City Manager

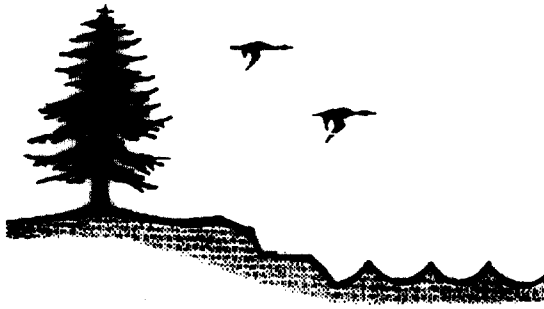
55 Front Street

Bath, Maine 04530

Ships

Heritage

Progress



## Town of Naples

Town Hall  
Village Green  
P.O. Box 1757  
Naples, Maine 04055  
(207) 693-6364

November 17, 1997

Senator Susan Collins  
10 Moulton  
Portland, ME 04101

Dear Senator Collins:

We are writing you about the Federal Communications Commission and its attempts to preempt local zoning of cellular, radio and TV towers by making the FCC the "Federal Zoning Commission" for all cellular telephone and broadcast towers. Both Congress and the courts have long recognized that zoning is a peculiarly local function. Please immediately contact the FCC and tell it to stop these efforts which violate the intent of Congress, the Constitution and principles of Federalism.

In the 1996 Telecommunications Act, Congress expressly reaffirmed local zoning authority over cellular towers. It told the FCC to stop all rulemaking where the FCC was attempting to become a Federal Zoning Commission for such towers. Despite this instruction from Congress, the FCC is now attempting to preempt local zoning authority in three different rulemakings.

**Cellular Towers - Radiation:** Congress expressly preserved local zoning authority over cellular towers in the 1996 Telecommunications Act with the sole exception that municipalities cannot regulate the radiation from cellular antennas if it is within limits set by the FCC. The FCC is attempting to have the "exception swallow the rule" by using the limited authority Congress gave it over cellular tower radiation to review and reverse any cellular zoning decision in the U.S. which it finds is "tainted" by radiation concerns, even if the decision is otherwise perfectly permissible. In fact, the FCC is saying that it can "second guess" what the true reasons for a municipality's decisions are, need not be bound by the stated reasons given by a municipality and doesn't even need to wait until a local planning decision is final before the FCC acts.

Some of our citizens are concerned about the radiation from cellular towers. We cannot prevent them from mentioning their concerns in a public hearing. In its rulemaking the FCC is saying that if any citizen raises this issue that this is sufficient basis for a cellular zoning decision to immediately be taken over by the FCC and potentially reversed, even if the municipality expressly says it is not considering such statements and the decision is completely valid on other grounds, such as the impact of the tower on property values or aesthetics.

**Cellular Towers - Moratoria:** Relatedly the FCC is proposing a rule banning the moratoria that some municipalities impose on cellular towers while they revise their zoning ordinances to accommodate the increase in the numbers of these towers. Again, this violates the Constitution and the directive from Congress preventing the FCC from becoming a Federal Zoning Commission.

21 NOV 1997

Radio/TV Towers: The FCC's proposed rule on radio and TV towers is as bad: It sets an artificial limit of 21 to 45 days for municipalities to act on any local permit (environmental, building permit, zoning or other). Any permit request is automatically deemed granted if the municipality doesn't act in this timeframe, even if the application is incomplete or clearly violates local law. And the FCC's proposed rule would prevent municipalities from considering the impact such towers have on property values, the environment or aesthetics. Even safety requirements could be overridden by the FCC! And all appeals of zoning and permit denials would go to the FCC, not to the local courts.

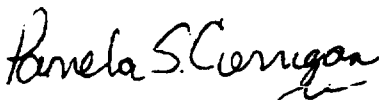
This proposal is astounding when broadcast towers are some of the tallest structures known to man—over 2,000 feet tall, taller than the Empire State Building. The FCC claims these changes are needed to allow TV stations to switch to High Definition Television quickly. But the Wall Street Journal and trade magazines state there is no way the FCC and broadcasters will meet the current schedule anyway, so there is no need to violate the rights of municipalities and their residents just to meet an artificial deadline.

These actions represent a power grab by the FCC to become the Federal Zoning Commission for cellular towers and broadcast towers. They violate the intent of Congress, the Constitution and principles of Federalism. This is particularly true given that the FCC is a single purpose agency, with no zoning expertise, that never saw a tower it didn't like.

Please do three things to stop the FCC: First, write new FCC Chairman William Kennard and FCC Commissioners Susan Ness, Harold Furchtgott-Roth, Michael Powell and Gloria Tristani telling them to stop this intrusion on local zoning authority in cases WT97-197, MM Docket 97-182 and DA96-2140; second, join in the "Dear Colleague Letter" currently being prepared to go to the FCC from many members of Congress; and third, oppose any effort by Congress to grant the FCC the power to act as a "Federal Zoning Commission" and preempt local zoning authority.

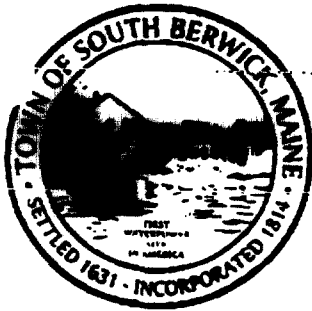
The following people at national municipal organizations are familiar with the FCC's proposed rules and municipalities' objections to them: Barrie Tabin at the National League of Cities, 202-626-3194; Eileen Huggard at the National Association of Telecommunications Officers and Advisors, 703-506-3275; Robert Fogel at the National Association of Counties, 202-393-6226; Kevin McCarty at the U.S. Conference of Mayors, 202-293-7330; and Cheryl Maynard at the American Planning Association, 202-872-0611. Feel free to call them if you have questions.

Very truly yours,



Pamela S. Corrigan  
Town Manager

cc: see attached list



## *South Berwick Municipal Offices*

180 MAIN STREET  
SOUTH BERWICK, MAINE 03908 1535  
TEL. 207-384-3300

Richard B. Brown  
Town Manager

November 5, 1997

Senator Susan M. Collins  
10 Moulton Street  
Portland, ME 04104

Dear Senator Collins:

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November 5, 1997

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November 5, 1997

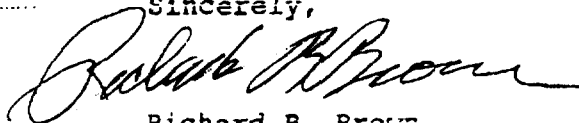
Page Three

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Sincerely,



Richard B. Brown  
Town Manager

cc: See Attached List